*Privy Council Appeal No.* 13 *of* 1949

**Canadian Pacific Railway Company** - - - - - *Appellant*

*and*

**The Attorney-General of British Columbia** - - - - *Respondent*

*and*

**The Attorney-General of Canada and others** - - - *Interveners*

FROM

**THE SUPREME COURT OF CANADA**

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# JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST NOVEMBER, 1949

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*Present at the Hearing:*

LORD PORTER
LORD GREENE
LORD MORTON OF HENRYTON
LORD REID
THE CHIEF JUSTICE OF CANADA
(THE RIGHT HON. T. RINFRET)

[*Delivered by* LORD REID]

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In 1946 the legislature of the Province of British Columbia enacted an amendment of the Hours of Work Act, under which it is provided that the working hours of an employee in any industrial undertaking shall not exceed 8 in the day and 44 in the week. The appellant owns and manages the Empress Hotel in Victoria, B.C. and the definition of industrial undertaking in the Hours of Work Act is such as to include a large number of the appellant's employees who work in that hotel. The appellant does not dispute that, in general, regulation of hours of work is a subject exclusively reserved to Provincial legislatures under section 92 of the British North America Act, 1867; but it has been contended for the appellant that, for reasons which will appear later, it is not within the power of the Provincial legislature to regulate the hours of work of any of the employees in the Empress Hotel and that the hours of work of these employees must be determined by an agreement between representatives of the appellant's employees and the appellant which is made binding by an Act of the Parliament of Canada (1947 11 Geo. VI c. 28 s. 1). That agreement provides for a 48 hour week. In order to determine this matter an order of reference was made by the Lieutenant-Governor of British Columbia on 21st September 1946 by which the following question was referred to the Court of Appeal for British Columbia for hearing and consideration. "Are the provisions of the 'Hours of Work Act,' being chapter 122 of the 'Revised Statutes of British Columbia, 1936,' and amendments thereto, applicable to and binding upon Canadian Pacific Railway in respect of its employees employed at the Empress Hotel, and if so to what extent?"

The facts regarding the Empress Hotel are stated in the Order of Reference as follows:—

> "The said Company has further, for the purposes of its lines of railway and steamships and in connection with its said business, built the Empress Hotel at Victoria, which it operates for the comfort and convenience of the travelling public. The hotel is available for the accommodation of all members of the public, as a public hotel. The said hotel caters for public banquets and permits the use of the hotel ballroom for local functions, for reward. The property upon which the said hotel is built is not contiguous to property used by the Company for its line of railway, and is not a terminus for its railway line or steamships. The Company has owned and operated the said hotel for a period of thirty-eight years, and the same provides accommodation for large numbers of travellers and tourists from Canada, the United States of America and elsewhere, having five hundred and seventy-three rooms. The operation of the hotel is a means of increasing passenger and freight traffic upon the Company's lines of railway and steamships. The Company owns and operates other hotels elsewhere in Canada for like purposes. There is a catering department in the hotel wherein the Company employs persons to prepare and serve meals. The Company also employs hotel clerks bookkeepers and other persons to do clerical work at the hotel."

On the 27th March, 1947, the Court of Appeal answered the question in Order of Reference in the affirmative by a majority of 4 to 1. On appeal the Supreme Court of Canada unanimously decided on 27th April, 1948, that the judgment of the Court of Appeal for British Columbia should be affirmed and the appeal dismissed. From that judgment an appeal is taken by special leave to His Majesty in Council. The determination of this appeal depends on the application to the facts of this case of the provisions of sections 91 and 92 of the British North America Act 1867. The relevant portions of these sections are:—

> "91. It shall be lawful for the Queen, by and with the advice and Consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:—
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> * * * * * *
>
> 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.
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> And any matter coming within any of the Classes of Subjects enumerated in this section shall not be deemed to come within the Class of Matter of a local or private nature comprised in the enumerative of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.
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> 92. "In each Province the Legislature may exclusively make laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:
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> * * * * * *
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> 10. Local Works and Undertakings other than such as are of the following Classes:—
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> (*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
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> (*b*) Lines of Steam Ships between the Province and any British or Foreign Country:

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

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13. Property and Civil Rights in the Province.

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16. Generally all Matters of a merely local or private Nature in the Province."

The inter-relation of sections 91 and 92 has frequently been the subject of litigation and certain principles have emerged which their Lordships think it well to recall in view of the nature of the arguments submitted for the appellant in this case. Three matters are dealt with in sections 91 and 92:—first the general power to make laws for the peace, order and good government of Canada conferred on the Parliament of Canada by the first part of section 91; secondly the classes of subjects enumerated in the latter part of section 91 as being within the exclusive legislative authority of the Parliament of Canada; and thirdly the Classes of Subjects enumerated in section 92 as being within the exclusive legislative authority of the provincial legislatures.

The following propositions were stated in the judgment of their Lordships delivered by Lord Tomlin in *Attorney-General for Canada* v. *Attorney-General for British Columbia* [1930] A.C. 111 and were approved in *In re The Regulation and Control of Aeronautics in Canada* [1932] A.C. 54 and *In re Silver Brothers* [1932] A.C. 514.

(1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s. 91, is of paramount authority, even though it trenches upon matters assigned to the provincial legislatures by s. 92: see *Tennant* v. *Union Bank of Canada* ([1894] A.C. 31).

(2) The general power of legislation conferred upon the Parliament of the Dominion by s. 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in s. 92 as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the Dominion: see *Attorney-General for Ontario* v. *Attorney-General for the Dominion* ([1896] A.C. 348).

(3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in s. 91: see *Attorney-General of Ontario* v. *Attorney-General for the Dominion* ([1894] A.C. 189); and *Attorney-General for Ontario* v. *Attorney-General for the Dominion* ([1896] A.C. 348).

(4) There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations meet the Dominion legislation must prevail: see *Grand Trunk Ry. of Canada* v. *Attorney-General of Canada* ([1907] A.C. 65).

The appellant in this case relies on the last part of the second of the above propositions and on the following passage in the judgment delivered by Lord Watson in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* [1896] A.C. 348 which is there referred to.

"Their Lordships do not doubt that some matters, in their origin local and provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interest

of the Dominion. But great caution must be observed in distinguishing between that which is local and provincial, and therefore within the jurisdiction of the provincial legislatures, and that which has ceased to be merely local or provincial, and has become matter of national concern, in such sense as to bring it within the jurisdiction of the Parliament of Canada."

The first argument submitted for the appellant sought to bring this case within the class of case last referred to. The appellant's argument may be stated in this way. The appellant has a transportation system which is one integrated system including ocean marine services; main and branch lines owned or operated by the appellant; services of passenger and goods trains; inland and coastal steamship services; airplane and telegraph services; stations with refreshment, lavatory and other amenities; a chain of transcontinental hotels, goods depots, wharfs, warehouses, grain elevators and other activities. This unified system is a national undertaking which cannot reasonably be viewed as a conglomeration of local works and undertakings. The Empress Hotel, as the material in the record shows, is an integral part of this unified system. Properly viewed as a unified system, the appellant's undertaking and the works comprised therein, including its hotels, do not come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by s. 92 assigned exclusively to the legislatures of the provinces. Accordingly the appellant's whole system, including its hotels, is within the legislative authority of the Parliament of Canada under its authority to make laws in relation to all matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces. The appellant does not deny that regulation of hours of work is ordinarily a matter of property and civil rights which falls under head 13 of section 92. The basis of this argument must be that the Canadian Pacific Railway Company's activities have become such an extensive and important element in the national economy of Canada that the Canadian Parliament is now entitled under the general powers conferred by the first part of s. 91 to regulate all the affairs of that Company, even where this involves legislating in relation to matters exclusively reserved to the Provincial Legislatures by s. 92. There are many companies beside the appellant whose businesses extend over all or most of the Provinces. It was not and could not be suggested that the Parliament of Canada could regulate the hours of work of employees of all such companies. The argument must be that, while the activities of those other companies, or most of them, in relation to the subjects enumerated in s. 92 remain of such a local or private nature that Provincial Legislatures retain the exclusive right to legislate in relation to them, the activities of the appellant in relation to those subjects are so different that s. 92 no longer applies to them. This is a novel argument in relation to transcontinental railways. Many cases have been litigated in which this argument would have been relevant. Many of these cases were of the greatest importance and several have come before this Board. It is not suggested that any new circumstances have emerged which would make this argument more appropriate in this case than in certain of the earlier cases and it is very late in the day to bring forward an argument of this character. Nevertheless their Lordships will deal with it. The British North America Act is not silent on the subject of railways and railway undertakings: s. 92 head 10 read in conjunction with s. 91 head 29 lays down with regard to this subject what shall be within the competence of Provincial legislatures and what within the competence of the Parliament of Canada. Their Lordships will have to give close examination to this matter in dealing with the next argument for the appellant. If the appellant were to succeed in that argument the argument now under examination would be unnecessary. The present argument is that, even if the line of division laid down in the Act leaves the regulation of the hours of work of the employees with whom this case is concerned within the exclusive competence of the Provincial legislature, yet there are overriding considerations arising from the position of the appellant which make that line of division inapplicable to this case. The appellant claims that its undertaking is not of a local or private nature. Let it be admitted for the purpose of this argument that that is so. But in dealing with this general question the position of the employees affected and of those who use the hotel is not irrelevant. From the point of view

of an employee who resides in British Columbia, the regulation of his hours of work is as much a matter of civil right in the Province whether he is employed by the appellant or by some other corporation. It is true that many matters which from one aspect are local and fall within the scope of s. 92 are nevertheless withdrawn from the competence of the Provincial Legislature, but that is by virtue of the terms of the last sentence of s. 91. That provision makes it clear that a matter which is truly one of civil rights in the Province will be withdrawn from the Provincial legislature and come within the competence of the Parliament of Canada if it comes within or is necessarily incidental to any of the subjects enumerated in s. 91 or expressly excepted from s. 92. But their Lordships can find neither principle nor authority to support the competence of the Parliament of Canada to legislate on a matter which clearly falls within the enumerated heads in s. 92 and cannot be brought within any of the enumerated heads in s. 91 merely because the activities of one of the parties concerned in the matter have created a unified system which is widespread and important in the Dominion. "It is interesting to notice how often the words used by Lord Watson in *Attorney General for Ontario* v. *Attorney General for the Dominion* have unsuccessfully been used in attempts to support encroachments on the Provincial legislative powers given by s. 92. They laid down no principle of constitutional law, and were cautious words intended to safeguard possible eventualities which no one at the time had any interest or desire to define" (*Attorney General for Canada* v. *Attorney General for Ontario* [1937] A.C. 326 at p. 353). In their Lordships' judgment the present case is very different from any of those exceptional cases to which the words used by Lord Watson are applicable. It must be borne in mind that the passage quoted above from the judgment delivered by Lord Watson follows on and must be read together with the following passage in the same judgment:

> "The general authority given to the Canadian Parliament by the introductory enactments of s. 91 is 'to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces'; and it is declared, but not so as to restrict the generality of these words, that the exclusive authority of the Canadian Parliament extends to all matters coming within the classes of subjects which are enumerated in the clause. There may, therefore, be matters not included in the enumeration, upon which the parliament of Canada has power to legislate, because they concern the peace, order, and good government of the Dominion. But to those matters which are not specified among the enumerated subjects of legislation, the exception from s. 92, which is enacted by the concluding words of s. 91, has no application; and, in legislating with regard to such matters, the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to provincial legislatures by s. 92. These enactments appear to their Lordships to indicate that the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92.
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> To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by s. 91, would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order, and good government of the Dominion, there is hardly a subject enumerated in s. 92 upon which it might not legislate, to the exclusion of the provincial legislatures."

In their Lordships' judgment these principles apply to the present case and they therefore do not accept the first argument for the appellant.

The second argument submitted for the appellant was on more familiar lines depending on the construction of head 10 (*a*) of s. 92.

Head 29 of s. 91 brings within the legislative authority of the Parliament of Canada any matter expressly excepted in the enumeration of classes of subjects in s. 92; and, as paragraphs (*a*), (*b*) and (*c*) of head 10 of s. 92 are exceptions from that head, it follows that if the Empress Hotel can be brought within the scope of any of these paragraphs it must come within the scope of s. 91. If the Hotel could be shown to be within the scope of s. 91 that would open the way for an argument that regulation of the hours of work of those who work in it must also be within the scope of that section and therefore a matter within the legislative authority of the Parliament of Canada. Paragraph (*b*) of head 10 is not relevant in this case but the appellant founded on both paragraphs (*a*) and (*c*). The arguments founded on these paragraphs are different and it will be convenient to deal with them separately.

Head 10 (*a*) begins by specifying four classes "Lines of steam or other ships, Railways, Canals, Telegraphs," it then adds another class "and other works and undertakings," and then concludes with qualifying words, "connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province." Their Lordships have no doubt that these qualifying words apply not only to the words which immediately precede them—"other works and undertakings"—but also to each of the four classes specified at the beginning of the paragraph. A more difficult question is the scope which should be attributed to the words "Lines of" at the beginning of the paragraph: must it be held that the four specified classes are Lines of steam and other ships, Lines of Railways, Lines of Canals, and Lines of Telegraphs; or do the words "Lines of" only apply to "steam and other ships" so that the other specified classes are not Lines of Railways, etc., but are simply Railways, Canals, and Telegraphs? In their Lordships' judgment the latter construction is correct. The context shows that each of the four specified classes is intended to be a class of "works and undertakings." Head 10 begins by referring to local works and undertakings and the phrase which follows the four specified classes is "other works and undertakings." The latter part of the paragraph makes it clear that the object of the paragraph is to deal with means of inter-Provincial communication. Such communication can be provided by organisations or undertakings, but not by inanimate things alone. For this object the phrase "lines of ships" is appropriate: that phrase is commonly used to denote not only the ships concerned but also the organisation which makes them regularly available between certain points. But the phrase "lines of railways" would not normally have a similar meaning: it would refer rather to railway tracks and those things which are necessarily incidental to their use and would not be appropriate to denote the undertaking which provides regular travelling facilities. In their Lordships' view the structure of the paragraph does not require that the words "lines of" shall be held to qualify the word "railways"; and to read in those words would tend to defeat the purpose of the paragraph and would introduce a difficult and perhaps unworkable distinction between those parts of a railway undertaking which could properly be denoted by the term "lines of railways" and would therefore be within the legislative authority of the Parliament of Canada, and those parts of the undertaking which could not be so regarded.

The question for decision, therefore, is, in their Lordships' view, whether the Empress Hotel is a part of the appellant's railway works and undertaking connecting the Province of British Columbia with other Provinces or is a separate undertaking. A company may be authorised to carry on and may in fact carry on more than one undertaking. Because a company is a railway company it does not follow that all its works must be railway works or that all its activities must relate to its railway undertaking. By the Canadian Pacific Railway Act, 1902, the appellant was authorised to build and operate hotels (s. 8) to engage in mining and other activities (s. 9) to construct and operate electric generating stations (s. 10) and to exercise the powers of an irrigation company (s. 11). The powers conferred by s. 9 were expressed to be for the purpose of enabling the appellant to utilise its land grant. It was held in *Wilson* v. *Esquimault*

*& Nanaimo Ry. Co.* [1922] 1 A.C. 202 that subsidy lands were not held by the company as part of its railway or of its undertaking as a railway company and were not withdrawn from the legislative authority of the Provincial legislature: and it could hardly be suggested that buildings erected on such lands for the purpose of carrying on mining or other activities authorised by s. 9 of the appellant's Act are works coming within the scope of head 10 (*a*) of s. 92. In the case of other works or other activities it may be difficult to determine whether or not they are part of the company's railway works and undertaking, and the question may depend both on the terms of the section authorising them and on the facts of the case. S. 8 of the appellant's Act of 1902 is in the following terms: "The company may for the purposes of its railway and steamships and in connection with its business build purchase acquire or lease for hotels and restaurants such buildings as it deems advisable and at such points or places along any of its lines of railway and lines operated by it or at points or places of call of any of its steamships and may purchase lease and hold the land necessary for such purposes and may carry on business in connection therewith for the comfort and convenience of the travelling public and may lay out and manage parks and pleasure grounds upon the property of the company and lease the same from or give a lease thereof to any person or contract with any person for their use on such terms as the company deems expedient."

This section limits the places where the appellant may build or operate hotels but it does not limit the classes of hotel business which may be carried on therein. Their Lordships do not read the authority to carry on business "for the comfort and convenience of the travelling public" as requiring the appellant to cater exclusively or specially for those who are travelling on its system. The appellant is free to enter into competition with other hotel keepers for general hotel business. It appears from the facts stated in the Order of Reference that the appellant has so interpreted its powers and that in the Empress Hotel it does carry on general hotel business. It may be that, if the appellant chose to conduct a hotel solely or even principally for the benefit of travellers on its system, that hotel would be a part of its railway undertaking. Their Lordships do not doubt that the provision of meals and rest for travellers on the appellant's system may be a part of its railway undertaking whether that provision is made in trains or at stations, and such provision might be made in a hotel. But the Empress Hotel differs markedly from such a hotel. Indeed there is little if anything in the facts stated to distinguish it from an independently-owned hotel in a similar position. No doubt the fact that there is a large and well managed hotel at Victoria tends to increase the traffic on the appellant's system: it may be that the appellant's railway business and hotel business help each other, but that does not prevent them from being separate businesses or undertakings.

In dissenting from the judgment of the Court of Appeal in this case, O'Halloran J.A. said "But the undertaking of the Canadian Pacific Railway Company is one single undertaking and is not a collection of separate and distinct businesses." His view was that because the hotel provides for the comfort and convenience of travellers it is an integral link in the appellant's transportation system, and that, as the other business done by the hotel cannot be severed from services to the appellant's passengers, the whole must be within the railway undertaking. For the reasons already given their Lordships are unable to agree with this view. In *Canadian Pacific Railway Company* v. *Attorney-General for Saskatchewan* [1947] 2 W.W.R. 909 one of the questions decided by the Court of Appeal for Saskatchewan was that the Hours of Work Act of that province did not apply to employees in the appellant's hotels in that province. MacDonald J.A. in delivering the judgment of the Court adopted the reasoning of O'Halloran J.A. to which reference has already been made and held that the hotels formed an adjunct of the appellant's "works and undertakings." If by that the learned judge meant that they formed a part of the railway undertaking then their Lordships are unable to reach that conclusion with regard to the Empress Hotel: but, if it was meant that the hotels, though not forming a part of the railway undertaking, were of service to it, then that, in their Lordships' view, is not enough to bring them within the scope of the exceptions to head 10 of s. 92.

Their Lordships were referred to a definition of "Pacific Railways" in an Act of the Parliament of Canada (Statutes of Canada 1932-33 23 & 24 Geo. V. c. 33) where the appellant's hotel system was specifically included in that definition. But that Act was passed for a particular purpose and in any event that definition cannot affect the meaning of the word "railways" in the British North America Act, 1867.

Their Lordships would add that if this hotel, or the appellant's chain of hotels is regarded as separate from its railway undertaking, then those hotels cannot come under the words "other works and undertakings connecting the province with any other or others of the provinces or extending beyond the limits of the province" because the hotels considered separately from the railway system do not connect one province with another. Their Lordships therefore hold that the Empress Hotel does not come within the scope of head 10 (*a*) of s. 92.

The third argument submitted for the appellant sought to bring the Empress Hotel within the scope of head 10 (*c*) of s. 92. If this argument is to succeed it is necessary to find that the hotel or something which includes the hotel has been declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage or two or more of its provinces. There is no declaration by the Parliament of Canada which specifically mentions either this hotel or the appellant's hotels generally; but it is contended for the appellant that the declaration contained in s. 6 (*c*) of the Railway Act, 1927 (Statute of Canada 1927 c. 170) is wide enough to embrace the appellant's hotels including the Empress Hotel. This was not the first declaration by the Parliament of Canada with regard to Railways. In an Act of 1883 (46 Vict. c. 24) amending the Consolidated Railway Act, 1879, it was declared in s. 6 that certain specified lines of railway, including the Canadian Pacific Railway, are works for the general advantage of Canada, and that every branch line or railway then or thereafter connecting with or crossing any of the specified lines of railway is a work for the general advantage of Canada. Declarations in substantially the same terms were contained in the Railway Act, 1886, s. 121 and the Railway Act, 1888, s. 306. It would be difficult to maintain that these declarations included anything beyond strictly railway works; but that question need not be further considered because in 1919 a wider form of declaration was enacted, and this form of declaration was repeated in 1927 and is still in force. In both the Railway Act, 1919, and the Railway Act, 1927, s. 6 (*c*) is in the following terms:—

> "The provisions of this Act shall, without limiting the effect of the last preceding section, extend and apply to:—
>
> * * * * * *
>
> (*c*) every railway or portion thereof, whether constructed under the authority of the Parliament of Canada or not, now or hereafter owned, controlled, leased, or operated by a company wholly or partly within the legislative authority of the Parliament of Canada, or by a company operating a railway wholly or partly within the legislative authority of the Parliament of Canada, whether such ownership, control or first mentioned operation is acquired or exercised by purchase, lease, agreement or other means whatsoever, and whether acquired or exercised under authority of the Parliament of Canada, or of the legislature of any province, or otherwise howsoever; and every railway or portion thereof, now or hereafter so owned, controlled, leased or operated shall be deemed and is hereby declared to be a work for the general advantage of Canada."

In both the Railway Act, 1919 and the Railway Act, 1927, s. 2 (21) provides that unless the context otherwise requires

> "'railway' means any railway which the company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel or other structure which the company is authorised to construct; and, except where the context is inapplicable, includes street railway and tramway."

It was argued that the Empress Hotel falls within the scope of this definition of railway and therefore within the scope of the declaration in s. 6 (c). In their Lordships' judgment that is not so. The fact that it was thought necessary to specify such things as sidings, stations, railway bridges and tunnels as being included in the definition of "railway" indicates that the word "railway" by itself cannot have been intended to have a very wide signification; and in their Lordships' view there is nothing in the definition to indicate that it was intended to include anything which is not a part of or used in connection with the operation of a railway system. The appellant founded on two general phrases which occur in the definition—"property real or personal and works connected therewith" and "other structure which the company is authorised to construct." With regard to the first of these phrases their Lordships are of opinion that the words "connected therewith" qualify the whole phrase and refer back to the preceding words and therefore property which is not connected with the railway system is not included: with regard to the second phrase the context shows that these words were not intended to bring in structures which have no connection with a railway system merely because a railway company was authorised to construct them. The appellant is authorised by the Canadian Pacific Railway Act, 1902, to carry on a variety of undertakings including mining, electricity supply and irrigation: it cannot have been intended that structures erected solely for the purposes of these undertakings and having no connection with the railway system should be included within this definition of "railway." Accordingly the Empress Hotel could only come within the scope of the definition if it could be regarded as connected with the appellant's railway system or railway undertaking. Their Lordships have already held that that hotel is not part of the appellant's railway or railway works and undertaking within the meaning of s. 92 (10) of the British North America Act, 1867: for similar reasons they hold that it does not come within the scope of the declaration enacted by the Parliament of Canada in s. 6 (*c*) of the Railway Act, 1927. It is therefore unnecessary for their Lordships to consider the argument that this declaration is not a valid declaration. In the *Luscar Collieries* case (1927 A.C. 925) their Lordships stated that they wished it "distinctly to be understood that so far as they are concerned the question as to the validity of s. 6 (*c*) of the Act of 1919 is to be treated as absolutely open." S. 6 (*c*) of the Act of 1927 is in the same terms, and the question of its validity remains absolutely open so far as their Lordships are concerned.

It is also unnecessary for their Lordships to express any opinion on the question whether, if the Empress Hotel could be brought within the scope of either head 10 (*a*) or head 10 (*c*) of s. 92 of the British North America Act, 1867, regulation of the hours of work of persons employed in it would be either within the exclusive legislative authority of the Parliament of Canada or within the domain in which Provincial and Dominion legislation may overlap. As their Lordships hold that the general power conferred on the Parliament of Canada by the first part of s. 91 does not apply in this case and that this hotel does not come within the scope of either head 10 (*a*) or head 10 (*c*) of s. 92 it follows that regulation of the hours of work of those employed in this hotel is within the exclusive legislative authority of the legislature of the Province of British Columbia and that the question in the Order of Reference was rightly answered in the affirmative by the Canadian Courts.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. As the parties have agreed that there should be no costs of the appeal their Lordships make no order as to costs.

(66409) Wt. 8084—42 140 12/49 D.L. G 338

In the Privy Council

CANADIAN PACIFIC RAILWAY COMPANY

*and*

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA

*and*

THE ATTORNEY-GENERAL OF CANADA AND OTHERS

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DELIVERED BY LORD REID

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